

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	<u>ORDER</u>
- against -	:	03 Cr. 567 (DC)
CHEN TENG,	:	
Defendant.	:	

CHEN TENG,
...

Defendant. : :

CHIN, Circuit Judge:

In February 2004, following a string of armed robberies, defendant Teng Chen pled guilty to four counts of conspiracy to commit robbery in violation of 18 U.S.C. § 1951 and one count of brandishing a firearm in connection with a Hobbs Act conspiracy to commit murder ("Count Four"). I sentenced him to 192 months' imprisonment and five years' supervised release. Chen, who served his 192-month sentence and has been on supervised release since June 30, 2017, now moves pursuant to 28 U.S.C. § 2255 to vacate his conviction on Count Four and to terminate his supervised release. His motion is granted, in both respects.

As the government concedes, the crime charged in Count Four -- which was based on the residual clause of 18 U.S.C. § 924(c)(3)(B) -- no longer constitutes a crime of violence and

therefore the conviction on Count Four must be vacated. See United States v. Davis, 139 S. Ct. 2319, 2324 (2019).

Accordingly, the conviction on Count Four is VACATED and Chen is resentenced to 192 months' imprisonment (concurrent) and three years' supervised release (concurrent) on the remaining counts. The Court will enter an amended judgment accordingly. Moreover, as the government acknowledges, because Chen paid his special assessment on Count Four, he is entitled to a refund of \$100.

Because Chen has already completed this sentence, the only remaining issue is whether his term of supervised release should be terminated now. I find that it should.

First, had Chen been sentenced without Count Four, his Guideline range would have been less than 192 months, and he would likely have completed a three-year term of supervised release long ago. Second, Chen has already been on supervision for nearly three years. Third, Chen has not posed any problems while on supervision, and he has demonstrated that early termination would be in the interest of justice.

Accordingly, the conviction on Count Four is VACATED, Count Four is DISMISSED, Chen's request for early termination is GRANTED, and his term of supervised release is TERMINATED effective seven days from the date of this order. Chen's

counsel shall contact the Court's finance department to provide Chen's remittance information so that Chen can be sent a refund.

SO ORDERED.

Dated: New York, New York
 April 8, 2020

s/Denny Chin
DENNY CHIN
United States Circuit Judge
Sitting By Designation